

SENATE BILL 3535

By Herron

AN ACT to amend Tennessee Code Annotated, Title 7;
Title 13 and Title 45, relative to residential
mortgages.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 13, Chapter 23, is amended by adding
SECTION 2 through SECTION 10 as a new, appropriately designated part.

SECTION 2.

(a) The Tennessee housing development agency, hereinafter referred to as the
"agency," may make loans secured by liens on residential real property located in this
state to residents of this state eligible for such loans as described in this part. For the
purpose of this part, the term "mortgage" includes any obligation evidenced by a security
document and secured by a lien upon real property located within this state including,
but not limited to, a deed of trust and land sale agreement. "Mortgage" also includes an
obligation evidenced by a security lien on real property upon which an owner-occupied
mobile home is located.

(b) This part shall not be applicable if:

(1) The property securing the mortgage is not the principal residence of
the mortgagor;

(2) The property securing the mortgage is not a one or two-family owner-
occupied residence;

(3) The mortgage is insured by the Federal Housing Administration under
Title II of the National Housing Act (12 U.S.C. § 1707-1715z-22a);

(4) The mortgage on the property was given by a noncorporate seller,
unless the noncorporate seller elects, in writing, in the mortgage or elsewhere to

be covered by this part. For purposes of this part "noncorporate seller" means any person who is given a mortgage by a buyer to secure repayment of the purchase price of real property who is not a bank, a savings and loan association, a mortgage bank, a consumer discount company or other entity in the mortgage lending business;

(5) The mortgagor is more than twenty-four (24) months delinquent or in default for more than twenty-four (24) months, pursuant to the terms of mortgagor's residential mortgage. This requirement means that if the mortgagor is more than twenty-four (24) consecutive or nonconsecutive months in arrears on the residential mortgage in question, no matter what the reason therefore, the agency shall not be authorized to make any loans hereunder to such mortgagor;

(6) The aggregate amount of arrearages due to a mortgagee pursuant to the terms of the mortgage, without regard to any acceleration under the mortgage, including, but not limited to, the amount of principal, interest, taxes, assessments, ground rents, hazard insurance, any mortgage insurance or credit insurance premiums, exceeds the sum of sixty thousand dollars (\$60,000); or

(7) The property is encumbered by more than two (2) mortgages, other than a mortgage filed by the agency to secure repayment of the mortgage assistance loans, or by other liens or encumbrances which would unreasonably impair the security of the agency's mortgage.

(c) The agency shall carry out the program established by this part. The agency shall report annually to the general assembly on the effectiveness of the homeowner's emergency mortgage assistance program in accomplishing the purposes of this part.

(d) The agency shall promulgate rules to implement and enforce this part. Such rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(e) The agency shall designate and approve nonprofit consumer credit counseling agencies in each county to be available to assist the agency in implementing this part, including, but not limited to, mandated counseling. A "consumer credit counseling agency" means for the purpose of this part a nonprofit consumer credit counseling agency located in this state which is approved by the agency or a housing counseling agency certified by the United States department of housing and urban development.

SECTION 3.

(a) Before any mortgagee may accelerate the maturity of any mortgage obligation covered under this part, commence any legal action including mortgage foreclosure to recover under such obligation, or take possession of any security of the mortgage debtor for such mortgage obligation, such mortgagee shall give the mortgagor notice as described in Section 4. Such notice shall be given in a form and manner prescribed by the agency. Further, no mortgagee may enter judgment by confession pursuant to a note accompanying a mortgage, and may not proceed to enforce such obligation pursuant to applicable rules of civil procedure without giving the notice provided for in this subsection (a) and following the procedures provided for under this part.

(b) A mortgagee shall not accelerate the maturity of any mortgage obligation covered under this part, commence any legal action including mortgage foreclosure to recover under such obligation, or take possession of any security of the mortgage debtor for such mortgage obligation until a determination has been made on a mortgagor's

application for emergency mortgage assistance payments or the applicable time periods provided for in Section 4 have expired, whichever is earlier.

(c) All pending legal actions by mortgagees on mortgages covered under this part in which sales pursuant to title 35, chapter 5 have not been consummated on the effective date of this part shall be temporarily stayed. The notice provided in Section 4 shall be given to all mortgagors against whom such legal actions are pending on the effective date of this part. Such stay shall extend until the applicable time limits provided for in Section 4 have expired or a mortgagor's request for assistance has been denied by the agency, whichever is earlier.

SECTION 4.

(a) Any mortgagee who desires to foreclose upon a mortgage shall send to such mortgagor at the mortgagor's last known address the notice provided in subsection (b); provided, however, that such mortgagor shall be at least sixty (60) days contractually delinquent in such mortgagor's mortgage payments or be in violation of any other provision of such mortgage.

(b)

(1) The agency shall prepare a notice which shall include all the information required by this subsection (b). This notice shall be in plain language and specifically state that the recipient of the notice may qualify for financial assistance under the homeowner's emergency mortgage assistance program. This notice shall contain the telephone number and the address of a local consumer credit counseling agency. This notice shall also advise the mortgagor of the mortgagor's delinquency or other default under the mortgage and that such mortgagor has thirty (30) days to have a face-to-face meeting with the mortgagee who sent the notice or a consumer credit counseling agency to attempt to resolve

the delinquency or default by restructuring the loan payment schedule or otherwise.

(2) The notice under subdivision (b)(1) must be sent by a mortgagee at least thirty (30) days before the mortgagee:

- (i) Asks for full payment of any mortgage obligation; or
- (ii) Begins any legal action, including foreclosure, for money due under the mortgage obligation or to take possession of the mortgagor's security.

(3) The notice adopted for use by the agency shall be promulgated by rule as provided in Section 2(d).

(4) The notice shall include a statement that, if the mortgagor is unable to resolve the delinquency or default within thirty (30) calendar days of the mortgagor's first contact with either the mortgagee or a consumer credit counseling agency, the mortgagor may apply to the agency or its duly authorized agent at the address and phone number listed in the notice in order to obtain an application and information regarding the homeowner's emergency mortgage assistance program.

(5) If the mortgagor meets with a consumer credit counseling agency, then the consumer credit counseling agency shall promptly notify all of the mortgagees secured by the mortgagor's real property, and no mortgagee so notified shall commence any legal action against the mortgagor's real property for a period not to exceed thirty (30) calendar days from the date that the mortgagor first meets with the consumer credit counseling agency.

(6) If the mortgagor applies for mortgage assistance payments, then the agency shall promptly notify all of the mortgagees secured by the mortgagor's

real property. The agency shall make a determination of eligibility within sixty (60) calendar days of receipt of the mortgagor's application. During the time that the application is pending, no mortgagee may commence legal action to foreclose upon its mortgage with the mortgagor.

(c) If the mortgagor fails to meet with the mortgagee or consumer credit counseling agency or meet any of the time limitations specified in the notice or if the mortgagor's application for mortgage assistance payments is denied, then the mortgagee may, at any time thereafter, take any legal action to enforce the mortgage without any further restriction or requirements under this part. Financial institutions shall not be the duly authorized agents of the agency for the purpose of making any decision on the approval of assistance under this part.

(d) If, after a face-to-face meeting, the mortgagor and the mortgagee reach an agreement to resolve the delinquency or default as provided for in subsection (b) and if, because of circumstances beyond the mortgagor's control, the mortgagor is unable to fulfill the obligations of that agreement, the mortgagor may apply to the agency or its duly authorized agent for assistance under this part within thirty (30) days of any default in payment under the agreement previously reached. The mortgagee shall not be required to send any additional notice pursuant to this part.

(e) All parties requiring notice pursuant to this part shall be deemed to receive notice on the third business day following the date of the mailing of the notice as documented by a certificate of mailing obtained from the United States Postal Service.

(f) Notwithstanding any other provisions of this section, a mortgagee shall not be required to send the uniform notice provided in subsection (b):

(1) To any mortgagor who is more than twenty-four (24) consecutive or nonconsecutive months in arrears on the residential mortgage in question, no matter what the reason therefore; or

(2) Where the aggregate amount of arrearages due to a mortgagee pursuant to the terms of the mortgage, without regard to any acceleration under the mortgage including, but not limited to, the amount of principal, interest, taxes, assessments, ground rents, hazard insurance, any mortgage insurance or credit insurance premiums, exceeds the sum of sixty thousand (\$60,000) dollars.

(g) Unless the mortgagor has cured the mortgagor's mortgage delinquency, by means of a mortgage assistance loan or otherwise, receipt of partial payments of arrears from the mortgagor, subsequent to the sending of the uniform notice, shall not mean that the mortgagee must send a new uniform notice to the mortgagor prior to legal action being taken to enforce the mortgage. A uniform notice sent to the mortgagor, while the mortgagor was in bankruptcy, shall be valid for the purpose of this part and no new uniform notice need be provided as a result of any discharge or dismissal of the bankruptcy petition or relief from the automatic stay.

(h) Notwithstanding any other provisions of this section, a mortgagee shall not be required to send the uniform notice provided in subsection (b) to any mortgagor who has already been sent the uniform notice and:

(1) Who did not apply for a mortgage assistance loan;

(2) Who applied for a mortgage assistance loan but whose application was denied; or

(3) Whose mortgage assistance disbursements were terminated by the agency for any reason.

SECTION 5.

(a) No assistance may be made with respect to a mortgage or mortgagor under this part unless all of the following are established:

(1) The property securing the mortgage, or other security interest in the case of units in cooperative or condominium projects, is a one-family residence, or two-family owner-occupied residence including one-family units in a condominium project or a membership interest and occupancy agreement in a cooperative housing project, is the principal residence of the mortgagor and is located in this state;

(2)

(i) Any mortgagee has indicated to the mortgagor its intention to foreclose; and

(ii) Payments under any mortgage have been contractually delinquent for at least sixty (60) days;

(3) The mortgage is not insured by the Federal Housing Administration under Title II of the National Housing Act (12 U.S.C. § 1707-1715z-22a);

(4) The mortgagor is a permanent resident of this state and is suffering financial hardship due to circumstances beyond the mortgagor's control that render the mortgagor unable to correct the delinquency or delinquencies within a reasonable time and make full mortgage payments;

(5) The agency has determined that there is a reasonable prospect that the mortgagor will be able to resume full mortgage payments within twenty-four (24) months after the beginning of the period for which assistance payments are provided under this part and pay the mortgage or mortgages in full by its maturity date or by a later date agreed to by the mortgagee or mortgagees for completing mortgage payments;

(6) The mortgagor has applied to the agency for assistance on an application form prescribed by the agency for this use which includes a financial statement disclosing all assets and liabilities of the mortgagor, whether singly or jointly held, and all household income regardless of source. Any applicant who intentionally misrepresents any financial information in conjunction with the filing of an application for assistance under this part may be denied assistance or required to immediately repay any amount of assistance made as a result of such misrepresentation, and the mortgagee may, at any time thereafter, take any legal action to enforce the mortgage without any further restrictions or requirements under this part;

(7) The mortgagee is not prevented by law from foreclosing upon the mortgage;

(8) The agency has determined, based on the mortgagor's financial statement, that the mortgagor has insufficient household income or net worth to correct the delinquency or delinquencies within a reasonable period of time and make full mortgage payments;

(9)(A) Except for the current delinquency, the mortgagor has had a favorable residential mortgage credit history for the previous five (5) years. This requirement means that, if the mortgagor has been more than three (3) consecutive months in arrears on a residential mortgage within the previous five (5) years, the mortgagor shall be ineligible for assistance, unless the mortgagor can demonstrate that the prior delinquency was the result of financial hardship due to circumstances beyond the mortgagor's control;

(B) For purposes of this section, in order to determine whether the financial hardship is due to circumstances beyond the mortgagor's

control, the agency may consider information regarding the mortgagor's employment record, credit history and current income;

(10) The mortgagor meets any other procedural requirements established by the agency.

(11) The mortgagor is not more than twenty-four (24) months delinquent or in default for more than twenty-four (24) months pursuant to the terms of mortgagor's residential mortgage. This requirement shall mean that if the mortgagor is more than twenty-four (24) consecutive or nonconsecutive months in arrears on the residential mortgage in question, no matter what the reason therefore, the mortgagor shall be ineligible for assistance; and

(12) The property is not encumbered by more than two (2) mortgages, other than a mortgage filed by the agency to secure repayment of the mortgage assistance loan, or by other liens or encumbrances which would unreasonably impair the security of the agency's mortgage.

(b) Upon a determination that the conditions of eligibility described in subsection (a) have been met by a mortgagor and money is available in the homeowner's emergency mortgage assistance fund, the mortgagor shall become eligible for the assistance described in Section 6. If the agency determines that a mortgagor has not met the conditions of eligibility described in subsection (a), the mortgagor shall be prohibited from reapplying for assistance under this part for a period of twenty-four (24) months from the date of such determination, unless there is a material change in circumstances; provided, however, that nothing in this subsection (b) shall prohibit any mortgagee from commencing legal action to enforce the mortgage without any further restriction or requirement under this part whenever the agency determines that the mortgagor is ineligible for assistance as provided in this section.

SECTION 6.

(a) If the agency determines that a mortgagor is eligible for assistance under this part, the agency shall pay directly to each mortgagee secured by the mortgagor's real estate payments on behalf of the mortgagor. The agency shall pay to each mortgagee the full amount then due to that mortgagee pursuant to the terms of the mortgage without regard to any acceleration under the mortgage, or the full amount of any alternative mortgage payments agreed to by the mortgagee and mortgagor. This amount shall include, but not be limited to, the amount of principal, interest, taxes, assessments, ground rents, hazard insurance, any mortgage insurance or credit insurance premiums. The initial payment made by the agency to each mortgagee shall be an amount which makes each mortgage current and pays reasonable costs and reasonable attorneys' fees already incurred by such mortgagee. However, in no event shall the total payment exceed the sum equal to twenty-four (24) consecutive or nonconsecutive months of arrears on any residential mortgage.

(b) After the agency has paid any and all arrearages pursuant to subsection (a) to each mortgagee, the mortgagor may be entitled to monthly mortgage assistance payments pursuant to this part. A mortgagor on whose behalf the agency is making mortgage assistance payments shall pay monthly payments to the agency. Such payments shall be in an amount which will cause the mortgagor's total housing expense not to exceed forty percent (40%) of the mortgagor's net effective income. This shall be the maximum amount the mortgagor can be required to pay during the period a mortgagor is eligible for emergency mortgage assistance; provided, however, that any mortgagor approved for continuing monthly mortgage assistance or whose continuing mortgage assistance is approved after being recertified by the agency, shall pay to the agency a minimum monthly payment of at least twenty-five dollars (\$25) for each

mortgage being assisted. The mortgagor shall make the above payment to the agency at least fifteen (15) days before each mortgage payment is due to each mortgagee. Upon receipt of this payment from the mortgagor, the agency or its duly authorized agent shall send the total mortgage payment directly to each mortgagee.

(c) For purposes of this section, unless the context otherwise requires:

(1) "Gross household income" means the total income of the applicant, all other owner-occupants of the residence, any spouse and children residing in the same household as the applicant and any other resident of the household declared by the mortgagor as a dependent for federal tax purposes. The income of other unrelated individuals residing in the household shall be considered part of gross household income to the extent that their income is made available in support of the household. If the mortgagor is receiving emergency mortgage assistance under a program other than that established in this part, the amount of the payment the mortgagor is required to make to the agency under this part shall take into consideration the amount of assistance the mortgagor is receiving under such other programs.

(2) "housing expense" means the sum of the mortgagor's monthly utility, hazard insurance expense, real estate taxes and required mortgage payments, including escrows; and

(3) "Net effective income" means gross household income less federal income and social security taxes.

(d) The amount by which the mortgage assistance payments made by the agency to all mortgagees exceeds the amount of payments made by the mortgagor to the agency shall be a loan in that amount by the agency to the mortgagor. Such loan

shall be evidenced by such documents as the agency shall determine and shall be subject to repayment with interest and secured as provided herein.

(e) If the mortgagor fails to pay to the agency any amounts due directly from the mortgagor under this section within fifteen (15) days of the due date, the agency shall review the mortgagor's financial circumstances as provided in subsection (b) to determine whether the delinquency is the result of a change in the mortgagor's financial circumstance. If the delinquency is not the result of a change in the mortgagor's financial circumstances, the agency shall terminate the emergency mortgage assistance payments and any mortgagee may, at any time thereafter, take any legal action to enforce its mortgage without any further restriction or requirement under this part. If the delinquency is the result of a change in the mortgagor's financial circumstances, the agency shall modify the mortgagor's required payments to the agency as the agency shall determine.

(f) If any mortgagee scheduled to receive payments from the agency pursuant to this part fails to receive from the agency the full amount of such payment within thirty (30) days of the scheduled due date, or if a mortgagor fails to observe and perform all the terms, covenants and conditions of the mortgage, that mortgagee may, at any time thereafter, take any legal action to enforce the mortgage without any further restriction or requirement under this part.

(g) Payments under this part shall be provided for a period not to exceed twenty-four (24) months, either consecutively or nonconsecutively, whether such payments are on account of arrears, continuing monthly assistance or any combination thereof, and shall not exceed the sum of sixty thousand dollars (\$60,000) on behalf of any mortgagor. The agency shall establish procedures for periodic review of the mortgagor's financial circumstances for the purpose of determining the necessity for continuation, termination

or adjustment of the amount of the payments. Payments shall be discontinued when the agency determines that, because of the changes in the mortgagor's financial circumstances, the payments are no longer necessary in accordance with the standards set forth in Section 5.

(1) The twenty-four (24) month limit on assistance available under this part established in this subsection (g) shall increase to thirty-six (36) months if during the month the homeowner submits an application for assistance the average rate of total unemployment in the state, as seasonally adjusted, for the period consisting of the most recent three (3) months for which such data for the state is published before the close of such month equals or exceeds six and one-half percent (6.5%).

(2) Every five (5) years, beginning in the year 2010, the general assembly shall review the limit on the total assistance available under this part established in this subsection (g) and the minimum monthly payment established in subsection (b). The general assembly may increase either or both upon a showing that increases in housing costs require higher loan amounts in order for this part to be beneficial to homeowners in all regions of the state.

(h) Repayment of amounts owed to the agency from a mortgagor shall be secured by a mortgage lien on the property and by such other obligation as the agency may require. The priority of any lien obtained by the agency under this part shall be determined in the same manner as the lien of a general secured creditor of the mortgagor. The lien or other security interest of the agency shall not be deemed to take priority over any other secured lien or secured interest in effect against the mortgagor's property on the date assistance payments begin. The agency may allow subordination of

the mortgage assistance lien if such subordination is necessary to permit the mortgagor to obtain a home improvement loan for repairs necessary to preserve the property.

SECTION 7. Upon approval of mortgage assistance, the agency shall enter into an agreement with the mortgagor for repayment of all mortgage assistance made by the agency plus interest as provided in subdivision (6). The agreement shall provide for monthly payments by the mortgagor and be subject to the following provisions:

(1) If the mortgagor's total housing expense as defined in Section 6 is less than forty percent (40%) of the mortgagor's net effective income, the mortgagor shall pay to the agency the difference between forty percent (40%) of the mortgagor's net effective income and the mortgagor's total housing expense, unless otherwise determined by the agency after examining the mortgagor's financial circumstances and ability to contribute to repayment of the mortgage assistance;

(2) If the mortgagor's total housing expense is more than forty percent (40%) of the mortgagor's net effective income, repayment of the mortgage assistance shall be deferred until the mortgagor's total housing expense is less than forty percent (40%) of the mortgagor's net effective income; provided, however, that any mortgagor who has received mortgage assistance shall pay to the agency a minimum monthly repayment of at least twenty-five dollars (\$25) for each mortgage that was assisted. Such minimum monthly repayment shall not result in the accrual of interest on the mortgage assistance loan pursuant to subdivision (6);

(3) The forty-percent ratio established under subdivisions (1) and (2) shall be reduced to thirty-five percent (35%) if during the month the homeowner submits an application for assistance the average rate of total unemployment in the state, as seasonally adjusted, for the period consisting of the most recent three (3) months for

which such data for the state is published before the close of such month equals or exceeds six and one-half percent (6.5%);

(4) If repayment of mortgage assistance is not made by the date any mortgage is paid, the mortgagor shall make mortgage assistance repayments in an amount not less than the mortgage payment until the mortgage assistance is repaid;

(5) The agency shall establish procedures for periodic review of the mortgagor's financial circumstances to determine the amounts of repayment required under this section. Notwithstanding any other provision of this section, the agency shall require full or partial repayment of the mortgage assistance loan once the mortgagor has established credit to the extent that there is sufficient equity in the property for the mortgagor to be able to refinance their mortgage obligations at reasonable rates and terms as determined by the agency;

(6) Interest shall accrue on all mortgage assistance made by the agency at the rate of nine percent (9%) per annum. Interest shall start to accrue whenever the mortgagor begins to make repayment under this section. Interest shall accrue only during the period in which the mortgagor is required to make repayment under this section. When any mortgage for which mortgage assistance was made is paid, interest shall then accrue on all mortgage assistance due and owing at the same rate and on the same basis as the mortgage for which the mortgage assistance was made; and

(7) All moneys received from mortgagors for repayment of mortgage assistance shall be deposited in the state homeowner's emergency mortgage assistance fund established by the agency for the sole purpose of implementing this part.

SECTION 8. A financial institution shall not be deemed to be in violation of any statute, regulation or rule of supervisory authorities by reason of any agreement, forbearance of modification of the payment or other terms of a mortgage as an effect of the assistance program

or by reason of actions taken or not taken pursuant to the program. No mortgage loan as to which assistance payments are being made shall be deemed to be delinquent or classified as such by supervisory authorities during the continuance of such assistance payments.

SECTION 9.

(a) The homeowner's emergency mortgage assistance fund is created as a separate agency account within the general fund for the sole purpose of implementing this part. No other agency funds, moneys or interest earnings shall be utilized for the purposes of this part. Investment and interest earnings on moneys from this fund may be used by the agency for the administrative costs of the program.

(b) The homeowner's emergency mortgage assistance fund shall operate as a revolving loan fund to which shall be credited all repayment of principal and interest by mortgagors to the agency to repay loans provided by the agency pursuant to this part as well as grants or donations from other sources and any funds that may be appropriated by the general assembly.

(c) All interest and earnings of the fund shall remain a part of the fund. No part of the fund shall revert to the general fund on any June 30, but shall remain a part of the fund available for expenditure in accordance with the provisions of this part.

SECTION 10. The provisions of this part shall not be applicable to any mortgage that becomes delinquent at any time when the agency has officially declared that it does not have money currently available in the homeowner's emergency mortgage assistance fund to approve applications for emergency mortgage assistance or to continue making assistance payments on behalf of mortgagors previously approved. The state treasurer shall have the duty to advise the agency not less frequently than once each calendar quarter of the amount available for the purposes of this part. The agency shall be deemed to have insufficient money currently available in the homeowner's emergency mortgage assistance fund if at any time the money

available in the fund is projected by the agency to be insufficient during the next sixty (60) days to pay out on new applications which have been or are expected (based at least on the previous twelve (12) month loan approval history) to be approved during such period and to continue making disbursements on behalf of mortgagors previously approved. In the event that the funds available to the agency in the homeowner's emergency mortgage assistance fund for purposes of this part become insufficient as officially declared by the executive director of the agency at least sixty (60) days prior to the funds being depleted, the agency shall immediately publish an announcement to that effect in the Tennessee Administrative Register and on the agency's web site. The announcement shall include a date certain at least ninety (90) days after such announcement after which mortgagees shall no longer be subject to this part and mortgagees may, at any time after the published date, take legal action to enforce the mortgage without any further restriction or requirement under this part. In the event that funds are replenished in sufficient amount by an appropriation or otherwise, the agency shall publish a similar notice, which shall be effective immediately, announcing that fact and mortgages shall again be subject to this part.

SECTION 11. For purposes of promulgating rules and publishing forms, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect January 1, 2009, the public welfare requiring it.